

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEFFREY SCOTT STANGE,

Defendant-Appellee.

UNPUBLISHED

March 29, 2002

No. 235847

Washtenaw Circuit Court

LC No. 00-001963-FH

Before: Sawyer, P.J., and Murphy and Hoekstra, JJ.

SAWYER, P.J. (concurring).

As the majority acknowledges, the prosecutor did not raise below the admission versus confession issue. Accordingly, while I agree with the result reached by the majority, I do not believe that it should be based on that issue. Rather, I would address the issue of compliance with the corpus delicti rule.

The prosecutor argues that the trial court incorrectly determined that the prosecutor could not demonstrate the corpus delicti for manslaughter. I agree.

The corpus delicti of a manslaughter, like other homicides, is established by showing a death at the hands of a criminal agency. *People v Bryant*, 129 Mich App 574, 583; 342 NW2d 86 (1983). The prosecutor is not required to prove every element of the crime before defendant's statements can be introduced. *People v Williams*, 422 Mich 381, 391-392; 373 NW2d 567 (1985).

It is undisputed that the victim died; therefore, the inquiry in the case involves whether the prosecutor can establish, independent of defendant's statement, that the death was the result of a criminal agency. The essence of defendant's argument, and the trial court's decision, is that running a stop sign is, in and of itself, only a civil infraction. MCL 257.649(6), (8). Therefore, defendant argues, and the trial court agreed, there was no "criminal agency" which produced the death. Rather, it is the fact of the death (as the result of a civil infraction) which produced the crime. This presents what appears to be a novel question: whether the "criminal agency" aspect of the corpus delicti rule requires that the defendant's actions constitute a crime independent of the harm caused to the victim. I believe that defendant and the trial court take an unreasonably narrow view of the corpus delicti rule.

It is certainly true that it is frequently the case in a criminal homicide that the defendant's actions would constitute a crime even if the victim did not die. For example, if a defendant intentionally shoots the victim and the victim does not die, the defendant will still be guilty of a criminal assault. However, that is not necessarily the case where the mens rea required is one other than intentional or willful. Defendant's position would, in cases where the mens rea is recklessness, carelessness or negligence, essentially cause a defendant's statements to be inadmissible under the corpus delicti rule unless the prosecutor could prove the defendant's guilt independent of his statement (and rendering his statement merely cumulative). I do not believe that it reasonably serves the purpose of the corpus delicti rule to require that the defendant's actions constitute a crime independent of whether the victim dies.

As discussed above, the primary purpose of the corpus delicti rule is to preclude conviction for a criminal homicide where none was committed, such as where there is a disappearance, but not a death, or the death was by accidental means. *McMahan, supra* at 550. Thus, the focus is not on whether the defendant's actions were criminal even absent the victim's death. Rather, the focus is on whether someone's actions (presumably the defendant's) caused the death.

Indeed, once the corpus delicti has been established, it is permissible to use the defendant's statement to establish what degree of homicide has been committed. *Williams, supra* at 392; *Hughey, supra* at 589. Justice Ryan's reasoning in *Williams, supra* at 391, on this point is particularly helpful:

The logic of the [corpus delicti] rule is not served by extending it to require proof, *aliunde* the defendant's confession, not only that a particular deceased lost his life and that the loss is a result of criminal agency but, in addition, proof of the aggravating circumstances which move the seriousness of the crime up the scale of criminal accountability (measured by the severity of the penalty) from manslaughter to second-degree murder or to first-degree murder. Whatever the aggravating circumstances which constitute a crime, second-degree murder instead of manslaughter, or first-degree murder instead of second-degree murder, the danger that a defendant would confess to a criminal killing which never occurred is adequately obviated when it is shown, other than by the accused's confession, that the deceased victim died as a result of a criminal agency.

Similarly, there is no danger in a situation such as the case at bar that the defendant will be confessing to a criminal homicide that never occurred. The prosecutor, independent of defendant's statements to the police, will presumably be able to establish that Beatrice Smith died as a result of injuries sustained in a motor vehicle accident. Further, the prosecutor will be able to show, through the testimony of Denise Smith and the investigating officer, that defendant failed to stop at the stop sign and yield the right-of-way to the Smith vehicle, thus causing the accident. Thus, what is left for the prosecutor to prove is that defendant possessed the requisite mens rea (gross negligence for manslaughter). However, as discussed in *Williams, supra*, the defendant's statement may be used to establish the mens rea.

This leads us to *People v Watts*, 149 Mich App 502; 386 NW2d 565 (1986). In *Watts*, the defendant claimed self-defense and argued that his statement to the police should have been

suppressed under the corpus delicti rule because the prosecutor could not show the malice element necessary for second-degree murder independent of his statement. The *Watts* Court rejected the argument, relying on *Williams* for the proposition that the defendant's statement can be used to establish the malice element. *Watts, supra* at 513. Further, although *Watts* did not discuss the meaning of "criminal agency," it does illustrate a flaw in defendant's reasoning in the case at bar. In a case of self-defense, the defendant's actions do not constitute a crime (regardless whether the victim dies). Thus, if we were to accept defendant's argument, the logical extension would be that the prosecutor would have to disprove self-defense independent of the defendant's confession because, if it does constitute self-defense, there is no criminal conduct by the defendant to constitute a "criminal agency." Such a conclusion would negate the holding in *Williams* that the defendant's statement may be used to establish the mens rea.

Turning to this Court's opinion in *People v Martin*, 59 Mich App 471; 229 NW2d 805 (1975), overruled in part on other grounds in *Jackson Co Prosecutor v Court of Appeals*, 394 Mich 527, 528; 232 NW2d 172 (1975), while not directly a corpus delicti case, the opinion in *Martin, supra* at 483, did state that the "corpus delicti of manslaughter is established by showing (1) a dead body, and (2) an unnatural cause of death." Although courts have traditionally used the phrase "criminal agency," I think that perhaps the phrase "an unnatural cause of death" is more accurately descriptive of what is required to be shown to satisfy the objectives of the corpus delicti rule. That is, the purpose of the corpus delicti rule is well-served if the concept of "criminal agency" is equated with "unnatural cause of death." By requiring the prosecutor to show an unnatural cause of death, there will be no fear that the defendant is confessing to a homicide that has not occurred. The prosecutor would have to show that the victim is dead, and not merely missing, and there is not an innocent explanation for the death, such as the victim dying of a heart attack.

To some degree, this formulation overlooks the statement in *McMahan, supra* at 550, that one of the purposes of the corpus delicti rule is to exclude deaths by accident, but not to the extent that defendant would suggest. *McMahan* did not involve an accidental killing, but a stabbing. Thus, it is reasonable to assume that the class of accidental deaths referred to in *McMahan* are those that are purely accidental, such as the classic corpus delicti example of the sailor being swept overboard on a ship at sea by a wave rather than being pushed by another person. That is, "accident," as that term was used in *McMahan*, does not include cases where there is a criminal homicide caused by negligence.¹

This then brings us back to Justice Ryan's analysis in *Williams, supra* at 390-391, wherein the meaning of "corpus delicti" was discussed as follows:

Despite clarification of the early confusion about the meaning of the Latin idiom corpus delicti as used in homicide cases, there remains, among many

¹ See, e.g., *People v Jackson*, 1 Mich App 207; 135 NW2d 557 (1965). In *Jackson*, this Court held that the corpus delicti in a manslaughter case was established where the medical evidence showed that the skull fracture suffered by the infant victim could not have been inflicted by the child being dropped or falling out of bed. *Jackson, supra* at 211, also used the phrase "unnatural cause of death" rather than "criminal agency," citing 1 Gillespie, Michigan Criminal Law and Procedure (2d ed), § 23, p 42.

laymen at least, some lingering misunderstanding that the corpus delicti in such cases refers to the body of the deceased. It does not, of course, and refers instead to the body (corpus) of the wrong (delicti), “the loss sustained.”

In criminal homicide prosecutions, the delicti, or essence of the wrong, is the wrongful taking of a human life, a criminal killing. The Legislature has distinguished between criminal homicides of differing types and varying severity of penalty by defining and denominating as different crimes. . . . In all of the . . . various criminal homicides defined by the Legislature, the corpus delicti of the crime, the essential wrong, is the “loss sustained”; the taking of a human life by a criminal agency.

A loss is sustained regardless whether it is the result of an intentional act or a negligent act. In either case, there is a wrongful death. Including negligent acts producing the wrongful death satisfies the corpus delicti rule: Where it is shown that there is a wrongful death—a loss sustained—even by a negligent act, an act which may not even have been a crime absent the victim’s death, there is no danger that the defendant is confessing to a crime where there has been no loss sustained.

This brings us full circle: the focus in the application of the corpus delicti rule should not be on whether the defendant’s actions constitute a crime independent of the victim’s death, but on whether someone’s actions caused the death. That is, once the prosecutor has demonstrated that a death has, in fact, occurred and is the result of something other than natural causes or pure accident (that is, one without human culpability), the prosecutor may introduce the defendant’s statement to show the defendant’s identity as the perpetrator, as well as the defendant’s mens rea and thus the exact offense committed.

For the above reasons, I conclude that the phrase “criminal agency,” as used in the corpus delicti rule in a homicide case, includes a death by unnatural causes or an otherwise wrongful death and does not require a showing that the defendant’s actions would constitute a crime independent of the victim’s death. Therefore, the trial court erred in the case at bar in concluding that, because running a stop sign is a civil infraction rather than a crime, the corpus delicti of manslaughter could not be shown independent of defendant’s statement. Rather, the prosecutor could establish, independent of defendant’s statement, that the victim died as the result of injuries sustained in a motor vehicle accident. Furthermore, the prosecutor will be able to show through the testimony of the victim’s daughter and the investigating officer, that defendant disregarded the stop sign and, therefore, the death was not the result of a nonculpable accident. Accordingly, the corpus delicti for a homicide was established and, therefore, the prosecutor may introduce defendant’s statement to establish his mens rea (i.e., as evidence of gross negligence²).

/s/ David H. Sawyer

² I, of course, offer no opinion on whether defendant’s statement does, in fact, establish such a mens rea.